

BIDDER INSTRUCTIONS

WASHINGTON STATE FERRIES

M. V. PUYULLUP DRYDOCKING

CONTRACT NO. 00-7208

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1. INTRODUCTION

The 2001 Washington State Legislature passed Substitute House Bill 2221, which became effective on July 22, 2001. The Bill authorizes Washington State Ferries, a division of Washington State Department of Transportation (hereinafter called "WSF") to negotiate contracts for any amount, without bid, for single source contracts for vessel dry dockings when there is clearly and legitimately only one available bidder to conduct drydock related work for a specific class or classes of vessels. The Bill is codified at RCW 47.56.030(1)(b).

Pursuant to the statute, WSF issued a Request For Information (RFI) to establish drydock availability in the Puget Sound area for the various classes of WSF Vessels. Through this process, WSF has determined that Todd Pacific Shipyards, Inc. is the only shipyard that has a drydock facility available to drydock a Jumbo Mark II Class ferry. Todd Pacific Shipyards, Inc. is the only firm available to do the work during the period of October 23 - November 3, 2006. Accordingly, WSF issues this single source Invitation For Bid (IFB) and Bid Package for the following described project:

The Contract Work consists of the following repairs to the ferry M.V. Puyallup: U.S. Coast Guard Credit drydocking that includes: inspection of sea valves, propellers, propeller shafts, rudders, internal and external hull surfaces; conduct preservation to hull that includes grit or water blasting of the hull, prep and paint various areas of the hull surface, preservation paint of the green strips' and install automatic draft indicating system; modify mast support on both ends; install wrapper plate on rudders; and paint various areas of superstructure; and other related work, all as specified in the IFB Technical Specifications. The vessel is 460'2" x 90'0", and carries 218 vehicles and 2,500 passengers. All work must be performed within Puget Sound, Washington during the period of October 23 - November 3, 2006.

1 The project work shall hereinafter be called the "Contract Work". A more detailed
2 description of such Contract Work is provided in the IFB Special Provisions. As
3 used elsewhere in the IFB, the terms "State" and "Contracting Agency" shall have the
4 same meaning as "WSF".
5

6 7 **2. BID DUE DATE**

8
9 **The closing date for receipt of the initial bid is 11:00 a.m. on Wednesday, October**
10 **4, 2006.** See Section 17 for additional information regarding the bid opening.
11

12 13 **3. PREQUALIFICATION**

14 15 **A. Standard Prequalification**

16
17 The prequalification process for WSF's Public Works Contracts is governed
18 by Washington Administrative Code (WAC) Chapter 47-310 et. seq., copies
19 of which will be supplied upon request from the WSF Contracts Coordinator
20 (see Section 4 herein for address and phone number). Prequalification
21 questions may be addressed to the WSF Contracts Coordinator.
22

23 Before being furnished a Bid Form (informational copy enclosed), a
24 prospective bidder must be prequalified at the appropriate financial level
25 under WAC 47-310-050 for Class 82 work, "Drydocking and Hull Repairs".
26 A prospective bidder will not be given a Bid Form unless such bidder has
27 submitted its Standard Prequalification Questionnaire and Financial
28 Statement, and has received a WSF Certification of Prequalification, prior to
29 the Bid Due Date. Standard Prequalification application forms are available
30 upon request from the WSF Contracts Coordinator.
31

32 Alternatively, for a project valued at \$80,000 or less, a prospective bidder
33 may submit a one-time, project specific Contractor Prequalification
34 Questionnaire and Affidavit for Region Ad and Award Contracts, subject to
35 the procedural requirements described herein.
36

37 The Questionnaire (Standard or \leq \$80,000) enables WSF to decide whether or
38 not the bidder is qualified to perform ship repair and/or construction work.
39 The Questionnaire shall be sworn to before a person authorized to take oaths.
40

41 On the basis of the Questionnaire, WSF will either specify the type and
42 amount of work it considers the prospective bidder prequalified to perform or
43 advise the prospective bidder of the reasons they failed to be prequalified. To
44 remain prequalified under the Standard Prequalification requirements, the

bidder must submit an updated Questionnaire once a year and supplements whenever required by WSF.

A submittal deadline applies to any prospective bidder not prequalified or from whom a supplemental Questionnaire is due. To receive consideration for issuance of a Bid Form on a specific project, the Questionnaire (or supplement) must be received by WSF no less than fifteen (15) days prior to the scheduled Bid Due Date, unless otherwise specified by WSF.

WSF may withdraw a bidder's prequalification or reduce its amount if:

1. The extent of other work the bidder has under contract (WSF or otherwise) justifies such action, or
2. Past or present work on a WSF contract has been less than satisfactory.

If a bidder's Questionnaire does not contain sufficient information, WSF may refuse to provide a Bid Form and disregard any bid submitted. After opening a Bid, WSF may decide that a prequalified bidder is not responsible and may refuse to accept the bid on that basis. Such a refusal will be conclusive unless the bidder appeals within five days to the Superior Court of Thurston County. Any appeal shall be heard within ten days after it is filed and shall provide at least five days' notice to WSF.

The bidder shall ensure that the combination of the bid amount and other contract work with WSF does not exceed the prequalification amount. If this combination does exceed the prequalification amount, WSF may determine the bidder to be not responsible and refuse to award a contract.

Two or more prospective bidders may, in a joint venture, prequalify and bid jointly on a single contract. Each shall have filed a "Standard Questionnaire and Financial Statement". Together they shall also file a standard form of "Individual Project Statement of Joint Venture" and a joint venture agreement in a form acceptable to WSF.

To bid jointly on a continuous joint venture on more than one contract, two or more prospective bidders shall submit:

1. A "Standard Prequalification Questionnaire and Financial Statement" compiled for the joint venture;
2. A "Standard Prequalification Questionnaire and Financial Statement" for each member (if WSF has no copy on file); and

3. A copy of the "Joint Venture Agreement" signed by each member of the joint venture and naming each person authorized to sign documents on its behalf. (If any member is a corporation, a corporate resolution shall accompany the agreement. This resolution shall authorize the joint venture agreement and name the officer(s) authorized to sign the joint venture agreement or contract on behalf of the corporation.)

WSF will treat the continuing joint venture as a new firm and decide its prequalification on that basis.

Any joint venture and each of its members is subject to the Non-Responsibility Section herein.

4. IFB PACKAGE AND INTERPRETATION

Copies of the IFB Package may be purchased for the **non-refundable** fee of \$25.00 each by contacting:

Mailing Address:

Washington State Ferries
Attn: Legal Services & Contracts Department
2901 Third Avenue, Ste. 500
Seattle, Washington 98121 - 3014

Phone: (206) 515-3606 (recording)
Fax: (206) 515-3605

Address for Pick-up of IFB Packages:

Washington State Ferries (NW Corner of Third & Broad)
5th Floor Main Reception Area

Phone: (206) 515-3603
Fax: (206) 515-3605
E-Mail: parks@wsdot.wa.gov
(cc:olson@wsdot.wa.gov)

To facilitate timely responses, WSF will accept questions during the bid process only from the prospective bidder (i.e., prime contractor). WSF will not accept, and has no obligation to respond to, inquiries from subcontractors or suppliers. The prospective bidder should submit each question by both telefax and e-mail only, to WSF's

1 Contracts Coordinator (see above). The prospective bidder should also send a
2 courtesy copy (cc) of each e-mailed question to a second WSF Contracts Coordinator,
3 as indicated above. If there is any discrepancy between the faxed and e-mailed
4 versions of a question, then the faxed version will control. Questions must be
5 submitted soon enough to allow: (i) development and issuance of a written response;
6 and (ii) consideration of the response by the prospective bidder before submission of
7 a bid.

8
9 Additionally, if the prospective bidder requires an explanation, clarification, or
10 interpretation of any part of the Contract Documents, it may submit to the WSF
11 Contracts Coordinator a written request for an interpretation thereof. All requests for
12 interpretation are subject to the inquiry limitations specified in the preceding
13 paragraph. WSF will not be responsible for any other explanations or interpretations
14 of the Contract Documents. Oral explanations, interpretation, or instructions given
15 by anyone before award of the Contract will not be binding on WSF.

16
17 Any information given to the prospective bidder concerning any of the Contract
18 Documents will be furnished to the prospective bidder as an IFB Addendum if WSF
19 deems that information to be necessary in submitting the bid.

20 21 22 **5. EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK**

23
24 The bidder shall carefully examine the Contract Documents and the Bid Form.
25 Submittal of a bid shall be conclusive evidence that the bidder has made its
26 examination and understands all requirements for the performance of the Contract
27 Work. The bidder further warrants, agrees and acknowledges by submitting a bid that
28 it:

- 29
30 A. Has taken steps reasonably necessary to ascertain the nature and scope of the
31 Contract Work; and understands that failure to do so will not be justification
32 for a Change Order, protest or claim against WSF;
33
34 B. Has investigated and satisfied itself as to the general and local conditions
35 which can affect the Contract Work or its cost, including but not limited to:
36
37 1. Conditions bearing upon acquisition, transportation, disposal, handling,
38 and storage of materials;
39
40 2. The availability of labor, materials, water, electric power, access roads
41 and parking;
42
43 3. Uncertainties of weather, tides, wind, or similar physical conditions
44 at the work site; and

1 4. The character of equipment and facilities needed preliminary to and
2 during performance of the Contract Work.

3
4 C. Has satisfied itself as to the adequacy of time allowed for the completion of
5 the Contract Work;

6
7 D. Has not discovered any patent ambiguities, other than those identified in
8 writing to WSF, that would be discovered by a prudent contractor in preparing
9 its bid; and

10
11 E. Has read, fully understands and intends to sign the Contract, without
12 modification.

13
14 Any failure of the bidder to take the actions acknowledged above shall not relieve the
15 bidder from responsibility of estimating properly the difficulty and cost of
16 successfully performing the Contract Work, or from proceeding to successfully
17 perform the Contract Work without additional expense to WSF.

18
19 The bidder agrees that WSF shall not be liable to it on any claim for additional
20 payment or additional time or any claim whatsoever if the claim directly or indirectly
21 results from the bidder's failure to investigate and familiarize itself sufficiently with
22 the conditions under which the Contract is to be performed.

23
24 The bidder shall be familiar and comply with all Federal, State, and local laws,
25 ordinances, and regulations which might affect those engaged in the Contract Work.
26 WSF will not consider any plea of misunderstanding or ignorance of such
27 requirements.

28
29 Bid prices shall reflect what the bidder anticipates to be the cost of completing the
30 work, including methods, materials, labor, and equipment. Except as the Contract
31 may provide, the bidder shall receive no payment for any costs that exceed those in
32 the bid prices.

33
34 The prospective bidder is advised that projects with work on or adjacent to water may
35 require insurance coverage in compliance with:

36
37 A. The Longshoremen's and Harbor Worker's Compensation Act (administered
38 by U.S. Department of Labor), and/or

39
40 B. The State Industrial Insurance (administrated by the Washington State
41 Department of Labor and Industries).

42
43 The Contractor shall bear all cost for such insurance, as provided in: (i) Section 1-
44 07.10, Worker Benefits, of the Standard Specifications for Road, Bridge and

1 Municipal Construction of the State of Washington – English; and/or (ii) the
2 Contract.

3
4 No Claim shall be allowed because of any ambiguity in the Contract if:

5 A. The bidder discovers an ambiguity but fails to notify WSF; or

6
7 B. The bidder failed to discover a patent ambiguity that would be discovered by
8 a reasonably prudent contractor in preparing its bid.
9

10 For an explanation or interpretation of the bid documents, please refer to the IFB
11 Package and Interpretation Section herein.
12

13

14

15 **6. BID FORM**

16

17 At the request of the prequalified bidder, WSF will provide a Bid Form for any
18 project on which the bidder is eligible to bid. The Bid Form will identify the project
19 and its location and describe the work. It will also list estimated quantities, units of
20 measurement, the items of work, and the materials to be furnished at the unit bid
21 prices. The bidder shall complete spaces on the Bid Form that call for unit prices,
22 extensions, the total bid amount, signatures, date, acknowledgment of Addenda, and
23 the bidder's address. The required certifications are included as part of the Bid
24 Form.
25

26

27

28 **7. ESTIMATED QUANTITIES**

29

30 The quantities shown in the Bid Form and the Contract forms are estimates and are
31 stated only for bid comparison purposes. WSF does not warrant expressly or by
32 implication, that the actual quantities of work will correspond with those estimates.
33 Payment will be made on the basis of the actual quantities of each item of work
34 completed in accordance with the Contract requirements.
35

36

37

38 **8. PREPARATION OF BID**

39

40 The bid shall be submitted only on the Bid Form furnished by WSF and shall be
41 signed by the bidder. This official Bid Form will be furnished to the bidder, if
42 prequalified by WSF as required for this project. All prices, acknowledgments, and
signatures shall be legibly entered in the spaces provided on the Bid Form, typed or in
ink, and without alteration.

1 A sample Bid Form is enclosed herewith. This sample form is for the bidder's
2 guidance only, and is not to be used for bidding, unless otherwise approved in writing
3 by WSF.
4

5 Bid prices shall reflect what the bidder forecasts to be the cost of completing the
6 Contract Work at the time of performance, including methods, materials, labor and
7 equipment. There will be no adjustment in the Total Contract Price due to either
8 upward or downward changes in the rate of inflation. The bidder must project any
9 changes in cost/price during the term of the Contract and include such projection in
10 its bid price. Except as the Contract may provide, the bidder shall receive no
11 payment for any costs that exceed those in the bid prices.
12

13 Any unit price that is left blank or does not contain numeric figures will be
14 considered no charge for that bid item. The extension for that bid item will also be
15 treated as no charge and reflected as such in the total contract price regardless of what
16 has been placed in the extension column.
17

18 All prices shall be in legible figures (not words) written in ink or typed. The bid shall
19 include:
20

- 21 A. A unit price for each item (omitting digits more than four places to the right of
22 the decimal point),
23
- 24 B. An extension for each unit price (omitting digits more than two places to the
25 right of the decimal point), and
26
- 27 C. The total contract price (the sum of all extensions).
28

29 In the space provided on the signature sheet, the bidder shall confirm that all IFB
30 Addenda have been received.
31

32 The bidder shall submit a completed "Disadvantaged, Minority or Women's Business
33 Enterprise Certification" if it applies.
34

35 The bidder shall submit with the bid a list of:
36

- 37 A. Subcontractors who will perform the work of heating, ventilation and air
38 conditioning, plumbing as described in Chapter 18.106 RCW and electrical as
39 described in Chapter 19.28 RCW; and
40
- 41 B. The work those subcontractors will perform on the Contract.
42

43 The bidder shall not list more than one subcontractor for each category of work
44 identified, except, when subcontractors vary with bid alternates, in which case the
45 bidder shall identify which subcontractor will be used for which alternate. If no

subcontractor is listed, the bidder acknowledges that it does not intend to use any subcontractor to perform those items of work;

The bid shall be signed by the officer or officers having authority to sign them.

9. SALES OR USE TAX

In accordance with RCW 82.08.0285 and 82.12.0279, Washington State sales or use taxes shall not be included in any bid prices since neither sales nor use taxes are applicable to: sales of ferry vessels to the State of Washington for transportation within or outside territorial waters; sales of tangible property which becomes a component part of such vessels; and sales or charges for labor or services rendered in the construction or improving such vessels. WSF will provide any available Exemption Certificate to the successful bidder, upon request.

10. DBE AND OJT GOALS

A. Disadvantaged Business Enterprises

WSF encourages Disadvantaged Business Enterprise (DBE) participation on this Contract. A DBE participation document is attached hereto and incorporated herein as Exhibit "A". However, there is no DBE goal established for this Contract.

B. On-The-Job Training

This Contract has less than fifty (50) working days. As such, there is no On-The-Job-Training (OJT) goal for this Contract.

11. BID SECURITY

The bid shall be accompanied by Bid Security equal to at least five percent (5%) of the Total Bid Price, as shown on the Bid Form. Bid Security shall be in the form of (i) cash, a certified check, cashier's check, or project Bid Bond, or (ii) an annual Bid Bond. Checks shall be payable to Washington State Ferries.

The Bid Security shall be submitted as evidence of good faith and as a guarantee that, if awarded the Contract, the bidder will execute and deliver the Contract and provide the required Contract Security. Failure to furnish the required Bid Security shall make the bid nonresponsive and shall cause the bid to be rejected by WSF.

1 If a project or annual Bid Bond is selected, it must be submitted on a Bid Bond form
2 furnished or approved by WSF and signed by the bidder and its surety. A Bid Bond
3 shall not be conditioned in any way to modify the required five percent (5%) amount.
4 The surety shall: (i) be registered with the Washington State Insurance
5 Commissioner; and (ii) appear on the current Authorized Insurance List in the State
6 of Washington published by the Office of the Insurance Commissioner. See Section
7 26, Return of Bid Security, for related information.
8

9 Should the successful bidder fail to enter into the enclosed Contract with WSF and
10 furnish satisfactory Contract Security within the time period specified, the Bid
11 Security shall be forfeited as liquidated damages, unless WSF approves a delay in
12 writing.
13

14
15 **12. VACANT**
16

17
18 **13. DELIVERY OF BID**
19

20 The Bid must be submitted in a sealed envelope, together with the required Bid
21 Security, properly addressed as follows:
22

23 **Mailing and Delivery Address: (NW Corner of Third & Broad)**
24

25 Washington State Ferries
26 2901 Third Avenue, Ste. 500
27 Seattle, Washington 98121 - 3014
28

29 Attn: Legal Services & Contracts Department

30 RE: BID FOR M. V. PUYULLUP
31 DRYDOCKING CONTRACT
32

33 The bidder is advised that the Contract and Contract Security should **not** be executed
34 at the time of submitting a bid.
35

1 **14. PROPRIETARY DATA**

2
3 Any document(s) or information which a bidder believes is exempt from public
4 disclosure (RCW 42.17.310) shall be clearly identified by the bidder and placed in a
5 separate envelope marked with the IFB project name, the bidder's name, and the
6 words "Proprietary Data" along with a statement of the basis for such claim of
7 exemption. WSF's sole responsibility shall be limited to maintaining the above data
8 in a secure area and to notify such bidder of any request(s) for disclosure within a
9 period of five (5) years from the award date. Failure to so label such materials, or
10 failure to provide a timely response after notice of request for public disclosure has
11 been given, shall be deemed a waiver by a bidder of any claim that such materials are,
12 in fact, so exempt.

13 Notwithstanding such limitations, the bid submitted under this IFB shall be
14 considered confidential until WSF has awarded the Contract.
15

16
17 **15. ALTERATIONS, MISREPRESENTATIONS**

18
19 Except as otherwise provided herein, if the bid is incomplete, conditioned in any way,
20 contains alterations or items not called for on the Bid Form, or is not in conformity to
21 the law, it will be rejected as non-responsive. Additionally, the bidder shall not
22 misrepresent its Prequalification status, the amount of its bid, or its ability to perform
23 the Contract Work. Misrepresentation may be cause for: (i) rejection of a bid; (ii)
24 cancellation of Contract award; or (iii) termination of the Contract.
25

26
27 **16. WITHDRAWAL OR REVISION OF BID**

28
29 After submitting the bid to WSF, the bidder may withdraw or revise it if:

- 30
31 A. The bidder submits a written request signed by an authorized person; and
32
33 B. WSF receives the request before the Bid Due Date.
34

35 The original bid may be revised and resubmitted as the official bid if WSF receives it
36 before the Bid Due Date.
37

1 **17. PUBLIC OPENING OF BID**

2
3 The bid will be publicly opened and read on the Bid Due Date specified in Section 2
4 herein, unless the Bid Due Date has been delayed or canceled. The Bidder, any
5 authorized agent(s), and other interested parties are invited to be present.
6

7 All bid openings shall be held at WSF's administrative offices located at 2901 Third
8 Ave. Suite 500, in downtown Seattle unless otherwise specified by WSF.
9

10 **18. IRREGULAR BID**

11
12 A. The bid **will** be considered irregular and **will** be rejected by WSF if:

- 13
14 1. The bidder is not prequalified;
15
16 2. The Bid Form furnished or authorized by WSF is not used, or is altered;
17
18 3. The completed Bid Form contains any unauthorized additions, deletions,
19 alternative Bid, or conditions;
20
21 4. The bidder adds any provisions reserving the right to reject or accept the
22 award, or enter into the Contract;
23
24 5. A price per unit (if applicable) cannot be determined from the bid;
25
26 6. The Bid Form is not properly executed;
27
28 7. The bidder fails to submit or properly complete the Bid Form
29 Attachments; or
30
31 8. The bid does not constitute a definite and unqualified offer to meet the
32 material terms of the IFB.

33 B. The bid **may** be considered irregular and **may** be rejected by WSF if:

- 34
35 1. WSF deems any of the bid prices to be excessively unbalanced, either
36 above or below the amount of a reasonable bid for the item of work to
37 be performed, to the potential detriment of WSF;
38
39 2. Receipt of Addenda is not acknowledged on the Bid Form; or
40
41 3. Bid entries are not legibly typed or made in ink.

1 **19. NON-RESPONSIBILITY**

2
3 A. WSF, at its discretion, **may** reject a bid if it determines that the bidder is not
4 responsible for any of the following reasons:
5

- 6 1. The bidder is not prequalified for the work or to the full extent of the
7 bid;
8
9 2. An unsatisfactory performance record exists based on past or current
10 WSF or WSDOT work;
11
12 3. There is uncompleted work (WSF or otherwise) which might hinder or
13 prevent the prompt completion of the Contract Work;
14
15 4. The bidder fails to pay or settle bills for labor or materials on past or
16 current contracts;
17
18 5. The bidder has failed to complete a written public contract, or has
19 been convicted of a crime arising from a previous public contract;
20
21 6. The bidder is unable, financially or otherwise, to perform the Contract
22 Work;
23
24 7. The bidder is not authorized to do business in the State of Washington;
25 or
26
27 8. There are any other reasons deemed proper by WSF.
28

29 **20. PRE-AWARD INFORMATION**

30
31 Before awarding the Contract, WSF may require one or more of these items or
32 actions of the apparent successful bidder:
33

- 34 A. A complete statement of the origin, composition, and manufacture of any or
35 all materials to be used;
36
37 B. Samples of these materials for quality and fitness tests;
38
39 C. A breakdown of costs assigned to any bid item;
40
41 D. Attendance at a conference with WSF or its representatives;
42
43 E. A progress schedule showing the order of and time required for various
44 phases of Contract Work; and/or

- 1
2 F. Any other item or action deemed appropriate by WSF to complete the bid
3 evaluation.
4
5

6 **21. CONSIDERATION OF BID**
7

- 8 A. After opening and reading the bid, WSF will verify the bid for correctness of
9 form, compliance with bid terms set forth herein, and the extensions and totals
10 of the unit prices. WSF may reject the bid or disqualify the bidder for those
11 reasons set forth herein. If a discrepancy exists between the price per unit and
12 the extended amount of any bid item, the price per unit will control. The total
13 of extensions, corrected where necessary, will be used by WSF for bid
14 evaluation, and to determine the amount of the Contract Bond.
15
16 B. WSF reserves the right to: waive informalities in the bidding process, accept
17 the bid with or without further negotiation (see "Award of Contract" Article,
18 below); reject the bid (see next paragraph); revise or cancel the Contract Work
19 to be performed; or to do the Contract Work otherwise, if in its sole judgment,
20 the best interest of WSF is served thereby.
21
22 C. The Bidder is notified that WSF reserves the right to reject a bid, without
23 cause or for any reason, including rejection where the bid exceeds WSF's
24 good faith estimate by an unreasonable amount. In the event that a bid is
25 rejected, the project may be deferred indefinitely for re-advertisement, or
26 otherwise.
27
28

29 **22. AWARD OF CONTRACT**
30

- 31 A. The Contract Award amount will be the TOTAL BID PRICE as shown on
32 the Bid Form, subject to possible subsequent negotiation between the bidder
33 and WSF. If WSF deems such negotiation is necessary or prudent to achieve
34 an acceptable TOTAL BID PRICE, it shall promptly notify the bidder.
35
36 B. Unless the bid is rejected, WSF intends to award the Contract within three (3)
37 calendar days after the Bid Due Date; **Provided**, the bid shall remain in effect
38 for ninety (90) calendar days after the Bid Due Date. Upon mutual consent of
39 the apparent successful bidder and WSF, this period may be extended. If the
40 apparent successful bidder and WSF cannot agree on an extension, WSF
41 reserves the right to reject the bid. WSF will notify the successful bidder in
42 writing when it has been awarded the Contract.

43 **23. EXECUTION OF CONTRACT**
44

- 1 A. The successful bidder shall return the signed Contract, and the required
2 evidence of insurance and Contract Security by the due date specified in the
3 IFB Schedule, as amended and specified in the Contract Award Notice.
4 Before execution of the Contract by WSF, the successful bidder shall provide
5 any pre-award information WSF may require under the Pre-Award
6 Information section herein.
7
8 B. Until WSF signs the Contract, no bid shall bind WSF, nor shall any Contract
9 work begin. The Contractor shall bear all risks for any Contract work begun
10 and for any materials ordered before the Contract is signed by WSF.
11
12 C. If the bidder experiences circumstances beyond its control that prevents return
13 of the Contract Documents within the specified number of days after the
14 award date, WSF may grant additional calendar days for return of the
15 Documents, provided WSF deems the circumstances warrant it.
16
17

18 **24. CONTRACT SECURITY**
19

20 As required by Revised Code of Washington ("RCW") 39.08, a bond and/or alternate
21 form(s) of Contract Security shall be provided by the Contractor in an amount
22 adequate to protect one hundred percent (100%) of WSF's exposure to loss associated
23 with the Contract.
24

25 All proposed alternate form(s) of Contract Security must be delivered to the WSF
26 Contracts Coordinator for approval no later than five (5) working days before the Bid
27 Due Date. If WSF and the Contractor cannot agree as to the form of Contract
28 Security prior to the Bid Due Date, WSF reserves the right to reject the proposed
29 security.
30

31 If the successful bidder provides an executed Contract Bond (or Performance Bond
32 plus Payment Bond) form of Contract Security, the Bond(s) shall:
33

- 34 A. Be on a WSF-furnished form(s), sample copies of which are included in the
35 IFB package;
36
37 B. Be signed by an approved surety (or sureties) that:
38 1. Is registered with the Washington State Insurance Commissioner; and
39 2. Appears on the current Authorized Insurance List in the State of
40 Washington published by the Office of the Insurance Commissioner;
41
42 C. Be conditioned upon the faithful performance of the Contract by the
43 Contractor within the prescribed time; and

1
2 D. Guarantee that the surety shall indemnify, defend, and protect WSF against
3 any claim of direct or indirect loss resulting from the failure:
4

5 1. Of the Contractor (or any of the employees, subcontractors, or lower
6 tier subcontractors of the Contractor) to faithfully perform the
7 Contract; or
8

9 2. Of the Contractor (or the subcontractors or lower tier subcontractors of
10 the Contractor) to pay all laborers, mechanics, subcontractors, lower
11 tier subcontractors, materialperson, or any other person who provides
12 supplies or provisions for carrying out the work.
13

14 WSF may require sureties or surety companies on the Contract Bond to appear and
15 qualify themselves. Whenever WSF deems the surety or sureties to be inadequate, it
16 may, upon written demand, require the Contractor to furnish additional surety to
17 cover any remaining work. Until the added surety is furnished, payments on the
18 Contract will stop.
19

20 A more complete discussion of Contract Security is set forth in the IFB "Special
21 Provisions".
22
23

24 **25. FAILURE TO EXECUTE CONTRACT**
25

26 Failure to return evidence of insurance and approved Contract Security with the
27 signed Contract as required herein, or failure to provide Disadvantaged, Minority or
28 Women's Business Enterprise information if required in the Contract, or failure or
29 refusal to sign the Contract shall result in forfeiture of Bid Security.
30
31

32 **26. RETURN OF BID SECURITY**
33

34 All Bid Security will be held until the executed Contract and the Contract Security
35 have been provided to WSF. At such time, all Bid Security in the form of cash or
36 checks not subject to forfeiture, including the successful bidder's, shall be returned.
37 Bid Bonds shall be returned upon request.
38

1 **27. PROTEST PROCEDURES**

2
3 **A. Form and Substance**

4
5 All bidder's protests regarding any contents or portion of this Bid Package
6 must be submitted to WSF as soon as possible after the bidder/protestant
7 becomes aware of the reason(s) for the protest. All protests must be in writing
8 and signed by the bidder/protestant or an authorized agent. Such writing must
9 state all facts and arguments on which the bidder/protestant is relying as the
10 basis for its action. Such bidder/protestant shall also attach, or supply on
11 demand by WSF, any relevant exhibits referenced in the writing. Copies of
12 all protests and exhibits shall be mailed or delivered by the bidder/protestant
13 to the bidder against whom the protest is made (if any) at the same time such
14 protest and exhibits are submitted to WSF. All protests shall be directed to:

15
16 Washington State Ferries
17 2901 Third Avenue, Ste. 500
18 Seattle, Washington 98121 - 3014

19
20 Mr. Tim McGuigan,
21 Director of Legal Services & Contracts
22 Phone: (206) 515-3601
23 Fax: (206) 515-3605

24 **B. Pre-award Protests**

25
26 To allow sufficient response time, all pre-award protests must be received by
27 WSF no later than the 3:00 p.m. of the second business day starting the next
28 day after the Bid Due Date. If the protest is mailed after the Bid Due Date
29 and before the pre-award protest deadline, the bidder/protestant shall
30 immediately notify WSF's Contracts/Legal Services Manager by telephone, or
31 some other means of rapid communication, that a protest has been made.

32
33 WSF shall consider all the facts available to it, and issue a decision in writing
34 within five (5) business days after receipt of the protest, unless, in WSF's sole
35 discretion, more time is needed. The bidder/protestant and the bidder against
36 whom the protest is made will be notified if a longer time is necessary; and if
37 the additional time required affects the Bid Due Date or the award date, the
38 bidders shall be notified.

39
40 WSF's decision shall be final and conclusive. Selection of the successful
41 bidder, if one is to be made, will be postponed until after WSF has issued its
42 decision.

1 **28. PRE-IFB REPRESENTATIONS**

2
3 All project information previously provided by WSF to interested parties, whether
4 verbal or in writing, is superseded by the contents of this IFB and all Addenda
5 thereto. WSF shall not be liable to any party for: (i) any prior representations made
6 by WSF or its agents; or (ii) the contents of any preliminary documents issued prior
7 to this IFB.
8

9
10 **29. PREPARATION COSTS**

11
12 WSF shall not be liable to any bidder for its bid preparation costs or any other direct
13 or indirect costs arising from a response to this IFB.

14 **FEDERAL FUNDING CERTIFICATIONS**

15
16 **30. RESTRICTION ON LOBBYING**

17 **A. INSTRUCTIONS**

- 18
19 1. The Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq. prohibits
20 the use of federal funds to influence federal employees, Members of
21 Congress, and Congressional staff regarding specific projects.
22 Further, any person or entity who uses non-federal funds for lobbying
23 on behalf of specific projects or proposals must submit disclosure
24 documentation when these efforts are intended to influence the
25 decisions of federal officials. The provisions apply to grants,
26 contracts, and cooperative agreements involving \$100,000.00 or more.
27
28 2. Accordingly, a Certification titled "Certification Regarding Lobbying"
29 is below. The Certification applies if the amount of the primary
30 contract or any subcontract equals or exceeds \$100,000.00. The
31 Contractor shall ensure that the Certification is included in every such
32 subcontract and before any such subcontractor commences work on
33 the project.
34
35 3. Please note that a bidder's or a subcontractor's failure to furnish a
36 Certification may disqualify that person or firm from participating in
37 the project.
38
39 4. The Certification below may be reproduced for compliance with the
40 subcontractor provisions herein.

1 **B. CERTIFICATION REGARDING LOBBYING**

2
3 **(Third Party Contracts Over \$100,000).**

4
5 **By signing and submitting a bid / proposal for this project, the**
6 **prospective Contractor hereby certifies, to the best of its knowledge and**
7 **belief, that:**

- 8
9 1. No Federal appropriated funds have been paid or will be paid, by or on
10 behalf of the undersigned, to any person for influencing or attempting
11 to influence an officer or employee of any agency, a Member of
12 Congress, an officer or employee of Congress, or an employee of a
13 Member of Congress in connection with the awarding of any Federal
14 contract, the making of any Federal grant, the making of any Federal
15 loan, the entering into of any cooperative agreement, and the
16 extension, continuation, renewal, amendment, or modification of any
17 Federal contract, grant, loan, or cooperative agreement.
18
19 2. If any funds other than Federal appropriated funds have been paid or
20 will be paid to any person for influencing or attempting to influence an
21 officer or employee of any agency, a Member of congress, an officer
22 or employee of Congress, or an employee of a Member of Congress in
23 connection with this Federal contract, grant, loan, or cooperative
24 agreement, the prospective Contractor shall complete and submit
25 Standard Form-LLL, "Disclosure Form to Report Lobbying," in
26 accordance with its instructions [as amended by "Government Wide
27 Guidance For New Restrictions on Lobbying", 61 Fed. Reg. 1413
28 (1/19/96)].
29
30 3. The prospective Contractor shall require that the language of this
31 certification be included in the award documents for all sub-awards at
32 all tiers (including Sub-Contractors, sub-grants, and contracts under
33 grants, loans, and cooperative agreements) and that all Sub-
34 Contractors shall certify and disclose accordingly.
35

36 This prospective Contractor is a material representation of fact upon
37 which reliance is placed when this transaction was made or entered
38 into. Submission of this certification is a prerequisite for making or
39 entering into this transaction imposed by 31 U.S.C., Section 1352 (as
40 amended by the Lobbying Disclosure Act of 1995). Any person who
41 fails to submit the required certification shall be subject to a civil
42 penalty of not less than \$10,000 and not more than \$100,000 for each
43 such failure.
44

[Note: Pursuant to 31 U.S.C. Section 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The prospective Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure (if any). In addition, the prospective Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure (if any).

31. GOVERNMENT – WIDE DEBARMENT AND SUSPENSION

A. INSTRUCTIONS

1. Unless otherwise permitted by law, any person or entity that is debarred, suspended or voluntarily excluded may not participate in this federally assisted project, either as a participant or as a principal, during the period of debarment, suspension, or voluntary exclusion. To meet this requirement, a certification process has been established by 49 CFR Part 29.
2. Accordingly, a Contractor Certification titled “Government-Wide Debarment and Suspension” is provided below. The Certification applies if the bidder intends to utilize multiple subcontracts whose total aggregate value exceeds \$100,000.00. For all other contracts, and for all subcontractors regardless of contract value, a Subcontractor Certification form also titled “Government-Wide Debarment and Suspension”, is provided below. The prospective Contractor shall ensure that the latter Certification form is included in every project subcontract.
3. The inability of a person to provide the required Certification will not necessarily result in denial of participation in this project. However, a person that is unable to provide a positive Certification must attach a complete explanation, as so noted on the Certification.
4. The Certification of Subcontractors is provided below and must be included by the Contractor in each and every subcontract, and before any such subcontractor commences work on the project.

- 1 5. Please note that a bidder's or a subcontractor's failure to agree to
2 provide a Certification (or an explanation) may disqualify that person
3 or firm from participating in the project.
4

5 **B. CERTIFICATION OF CONTRACTOR REGARDING**
6 **DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY**
7 **MATTERS**
8

9 **(Third Party Contracts Over \$100,000).**

- 10 1. **By signing and submitting a bid / proposal, for this project, the**
11 **prospective Contractor is providing the certification set out below.**
- 12 2. The certification in this clause is a material representation of fact upon
13 which reliance was placed when this transaction was entered into. If it
14 is later determined that the prospective Contractor knowingly rendered
15 an erroneous certification, in addition to other remedies available to
16 the Federal Government, the State may pursue available remedies,
17 including suspension and/or debarment.
- 18 3. The prospective Contractor shall provide immediate written notice to
19 the State if at any time the prospective Contractor learns that its
20 certification was erroneous when submitted or has become erroneous
21 by reason of changed circumstances.
- 22 4. The terms "covered transaction," "debarred," "suspended,"
23 "ineligible," "lower tier covered transaction," "participant," "persons,"
24 "lower tier covered transaction," "principal," "proposal," and
25 "voluntarily excluded," as used in this clause, have the meanings set
26 out in the Definitions and Coverage sections of rules implementing
27 Executive Order 12549 [49 CFR Part 29]. You may contact the State
28 for assistance in obtaining a copy of those regulations.
- 29 5. The prospective Contractor agrees by submitting this bid/proposal
30 that, should the proposed covered transaction be entered into, it shall
31 not knowingly enter into any lower tier covered transaction with a
32 person who is debarred, suspended, declared ineligible, or voluntarily
33 excluded from participation in this covered transaction, unless
34 authorized in writing by the State.
- 35 6. The prospective Contractor further agrees by submitting this
36 bid/proposal that it will include the clause titled "Certification
37 Regarding Debarment, Suspension, Ineligibility and Voluntary
38 Exclusion - Lower Tier Covered Transaction", without modification,

1 in all lower tier covered transactions and in all solicitations for lower
2 tier covered transactions.

3 7. A participant in a covered transaction may rely upon a certification of
4 a prospective participant in a lower tier covered transaction that it is
5 not debarred, suspended, ineligible, or voluntarily excluded from the
6 covered transaction, unless it knows that the certification is erroneous.
7 A participant may decide the method and frequency by which it
8 determines the eligibility of its principals. Each participant may, but is
9 not required to, check the Nonprocurement List issued by U.S. General
10 Service Administration.

11 8. Nothing contained in the foregoing shall be construed to require
12 establishment of system of records in order to render in good faith the
13 certification required by this clause. The knowledge and information
14 of a participant is not required to exceed that which is normally
15 possessed by a prudent person in the ordinary course of business
16 dealings.

17 9. Except for transactions authorized under Paragraph 5 of these
18 instructions, if a participant in a covered transaction knowingly enters
19 into a lower tier covered transaction with a person who is suspended,
20 debarred, ineligible, or voluntarily excluded from participation in this
21 transaction, in addition to all remedies available to the Federal
22 Government, the State may pursue available remedies including
23 suspension and/or debarment.
24

25 **C. CERTIFICATION OF CONTRACTOR REGARDING**
26 **DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY**
27 **EXCLUSION**
28 **– PRIMARY COVERED TRANSACTION**
29

30 **(Third Party Contracts Over \$100,000).**

31
32 1. The prospective Contractor hereby certifies, by submission of this bid
33 / proposal, that neither it nor its “principals” (as defined in 49 CFR
34 29.105 (p) is presently debarred, suspended, proposed for debarment,
35 declared ineligible, or voluntarily excluded from participation in this
36 transaction by any Federal department or agency.
37

- 1 2. When the prospective Contractor is unable to certify to any of the
2 statements in this certification, such prospective Contractor shall
3 attach an explanation to this bid / proposal.
4

5 The prospective Contractor certifies or affirms the truthfulness and accuracy
6 of each statement of its certifications and disclosure (if any). In addition, the
7 prospective Contractor understands and agrees that the provisions of 31
8 U.S.C. A 3801, et seq., apply to these certifications and disclosure (if any).

9 **D. CERTIFICATION OF SUBCONTRACTOR REGARDING**
10 **DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY**
11 **MATTERS**
12

13 **(Third Party Contracts Over \$100,000).**

- 14 1. **By signing and submitting a bid / proposal, for this project, the**
15 **prospective lower tier participant is providing the certification set**
16 **out below.**
- 17 2. The certification in this clause is a material representation of fact upon
18 which reliance was placed when this transaction was entered into. If it
19 is later determined that the prospective lower tier participant
20 knowingly rendered an erroneous certification, in addition to other
21 remedies available to the Federal Government, the State may pursue
22 available remedies, including suspension and/or debarment.
- 23 3. The prospective lower tier participant shall provide immediate written
24 notice to the State if at any time the prospective lower tier participant
25 learns that its certification was erroneous when submitted or has
26 become erroneous by reason of changed circumstances.
- 27 4. The terms "covered transaction," "debarred," "suspended,"
28 "ineligible," "lower tier covered transaction," "participant," "persons,"
29 "lower tier covered transaction," "principal," "proposal," and
30 "voluntarily excluded," as used in this clause, have the meanings set
31 out in the Definitions and Coverage sections of rules implementing
32 Executive Order 12549 [49 CFR Part 29]. You may contact the State
33 for assistance in obtaining a copy of those regulations.
- 34 5. The prospective lower tier participant agrees by submitting this
35 bid/proposal that, should the proposed covered transaction be entered
36 into, it shall not knowingly enter into any lower tier covered
37 transaction with a person who is debarred, suspended, declared
38 ineligible, or voluntarily excluded from participation in this covered
39 transaction, unless authorized in writing by the State.

- 1 6. The prospective lower tier participant further agrees by submitting this
2 bid/proposal that it will include the clause titled "Certification
3 Regarding Debarment, Suspension, Ineligibility and Voluntary
4 Exclusion - Lower Tier Covered Transaction", without modification,
5 in all lower tier covered transactions and in all solicitations for lower
6 tier covered transactions.
- 7 7. A participant in a covered transaction may rely upon a certification of
8 a prospective participant in a lower tier covered transaction that it is
9 not debarred, suspended, ineligible, or voluntarily excluded from the
10 covered transaction, unless it knows that the certification is erroneous.
11 A participant may decide the method and frequency by which it
12 determines the eligibility of its principals. Each participant may, but is
13 not required to, check the Nonprocurement List issued by U.S. General
14 Service Administration.
- 15 8. Nothing contained in the foregoing shall be construed to require
16 establishment of system of records in order to render in good faith the
17 certification required by this clause. The knowledge and information
18 of a participant is not required to exceed that which is normally
19 possessed by a prudent person in the ordinary course of business
20 dealings.
- 21 9. Except for transactions authorized under Paragraph 5 of these
22 instructions, if a participant in a covered transaction knowingly enters
23 into a lower tier covered transaction with a person who is suspended,
24 debarred, ineligible, or voluntarily excluded from participation in this
25 transaction, in addition to all remedies available to the Federal
26 Government, the State may pursue available remedies including
27 suspension and/or debarment.

1 **E. CERTIFICATION OF SUBCONTRACTOR REGARDING**
2 **DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY**
3 **EXCLUSION**

4 **– LOWER TIER COVERED TRANSACTION**

5
6 **(Third Party Contracts Over \$100,000).**

- 7
8 1. The prospective lower tier participant hereby certifies, by submission
9 of this bid / proposal, that neither it nor its “principals” (as defined in
10 49 CFR 29.105 (p) is presently debarred, suspended, proposed for
11 debarment, declared ineligible, or voluntarily excluded from
12 participation in this transaction by any Federal department or agency.
13
14 2. When the prospective lower tier participant is unable to certify to any
15 of the statements in this certification, such prospective lower tier
16 participant shall attach an explanation to this bid / proposal.
17

18 The subcontractor certifies or affirms the truthfulness and accuracy of each
19 statement of its certifications and disclosure (if any). In addition, the
20 subcontractor understands and agrees that the provisions of 31 U.S.C. A 3801,
21 et seq., apply to these certifications and disclosure (if any).
22

(END)